IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.7864 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULABBHAI NANJIBHAI DHODIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7864 of 2004

MR PJ VYAS for Petitioner No. 1

MR KUNJAL D PANDYA, AGP for Respondent Nos. 1-2

..... for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/07/2004

ORAL JUDGEMENT

RULE. Mr.Kunjal D. Pandya, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 and 2. With the consent of the parties, the matter is taken up for final hearing today.

2. The facts of the present case are that one

Pratimaben Shah was the owner of the land bearing Survey No.261 paiki and also Survey No.254/2 situated at Village Karamkhal, Taluka Pardi, District Valsad. The said land came to be purchased by the petitioner by a registered Sale Deed in the year 1991. Necessary entry to that effect was effected in the Record of Rights vide Entry No.860 dated 06-09-1991. The said entry was also came to be certified on 11-10-1991. As the Collector, Valsad was of the opinion that the said entry was contrary to the provisions of law, he took the said entry into suo motu review and by order dated 28-05-1996 in RTS/Review/Case No.280 of 1993 set aside Entry No.860 by holding that the petitioner was non-agriculturist at the relevant time when he purchased the land in question and, therefore, directed the Mamlatdar & ALT, Pardi to initiate proceedings under Section 84-C of the Bombay Tenancy Act. Against the aforesaid order dated 28-05-1996, the petitioner preferred Revision Application No.9 of 1997 before the revisional authority i.e. learned Secretary (Appeals), Revenue Department, which came to be dismissed by judgment and order dated 18-05-2004 and confirmed the order dated 28-05-1996 passed by the Collector, Valsad in RTS/Review/Case No.280 of 1993. Being aggrieved and dissatisfied with the aforesaid order dated 18-05-2004 of the revisional authority, the present petition under Article 226 of the Constitution of India has been moved.

3. Mr.P.J.Vyas, learned advocate for the petitioner, has vehemently submitted that the order dated 28-05-1996 passed by the Collector, Valsad, cancelling the entry on the ground that there is a breach of provisions of the Bombay Tenancy Act, is without jurisdiction. He has further submitted that while considering the RTS proceedings the revisional authority has no jurisdiction to consider the question with regard to any breach of another law. He has further submitted that the entry was effected on the basis of the registered Sale Deed and the same is quashed and set aside on the ground that the petitioner was non-agriculturist and, therefore, there is a breach of the provisions of Bombay Tenancy Act. He has relied upon judgments of this Court in the cases of Evergreen Apartment Co-operative Housing Society Vs. Special Secretary, Revenue Department, 1991(1) GLR 113 and Legal Representatives of Popat Khima Ramani and Ors. Vs. Collector, Rajkot and Ors., reported in 2003(1) GLH 30 in support of his submission that the revisional authorities while considering the RTS proceedings has no jurisdiction and to consider validity of the transaction on the ground that there is a breach of other law and, therefore, requested to allow the present petition by quashing and setting a side the order passed by both the

authorities below.

4. Mr.Kunjal D. Pandya, learned AGP, has tried to support the orders passed by the Collector, Valsad as well as the revisional authority. He has submitted that as it was found that the petitioner was non-agriculturist he could not purchase the land in question and, therefore, the entry No.860 was rightly quashed and set aside.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. As held by this Court in the aforesaid cases that in the proceedings under Rule 108 of the Bombay Land Revenue Rules, the revenue authorities cannot independently pass orders of cancelling the entries on an assumption that the transactions recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed.

7. In the present case the entry in favour of the petitioner was on the basis of the registered Sale Deed. The revenue authorities are required to give effect by making necessary entry on the basis of a registered Sale Deed and cannot decide the legality and validity of the transaction in RTS proceedings. Accordingly, the judgment and order passed by all the authorities below are required to be quashed and set aside.

8. For the reasons stated above, the petition is allowed. The judgment and order dated 18-05-2004 passed by the revisional authority is hereby quashed and set aside. Entry No.860 dated 06-09-1991, certified on 11-10-1991 with regard to land in question is hereby restored. However, it is made clear that it will be open for the appropriate authority to initiate proceedings under the provisions of the Bombay Tenancy Act and any other law with regard to the transaction in question and if permissible under the law and in accordance with law. This Court has not considered on merits the validity of the transaction at all.

9. Rule made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

```
 * * *
'Bhavesh'
```